IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1166 of 2007

Murugambal .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Home, Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The District Magistrate
   and District Collector
   Vellore District
   Vellore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

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ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The above writ petition is filed by the wife of the detenu - Rajendiran, son of Balaraman, for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 3.8.2007 in C3/DO.No.63/2007 against the detenu, who is

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confined at Central Prison, Vellore, to set aside the same and to direct the respondents to produce him before this Court and to set him at liberty.

2.1. The order of detention dated 3.8.2007 was passed on the basis of ground case in P.S.Crime No.184 of 2007 for alleged commission of offences under Sections 4(1)(i)(aaa), 4 (1-A)(ii) of the Tamil Nadu Prohibition Act read with Section 328 IPC, complaint of which was made by one Sivaraj. According to Sivaraj, on 18.7.2007, when he consumed two tumblers of arrack sold by the detenu, he felt giddiness and burning sensation in eyes and stomach, and he vomited twice and became unconscious. The complainant approached the Kurisilpattu Police Station and gave a complaint, based on which a case was registered and after investigation, the detenu was arrested and contraband was seized. The samples of arrack seized were sent for chemical analysis and the report of the Scientific Officer and Assistant Chemical Examiner, Regional Forensic Science Laboratory, Vellore reveals that the samples contain 6.7% mg of Atropine per 100 ml, which is a poisonous substance.

2.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu in Crime Nos.162 and 180 of 2005, 113 and 196 of 2006, and 44 and 144 of 2007 all on the file of the Kurisilapattu Police Station for the offences punishable under Sections 4(1)(aaa), 4(1)((i)(aa), 4(1-A)(ii) read with Section 328 IPC, 4(1) (aaa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. The main contention of the learned counsel for the petitioner is that even though the representation dated 8.8.2007 of the detenu was received by the detaining authority on 10.8.2007, viz., within the statutory period of twelve days, the detaining authority rejected the same only on 25.8.2007, viz., after the lapse of the statutory period of twelve days, and such delay in exercising the power conferred

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on the detaining authority in the manner known to law vitiates the detention order.

4. We heard the submissions of both sides. We have perused the materials produced before us.

5. Concededly, the detention order was passed on 3.8.2007 and a representation was made on behalf of the detenu on 8.8.2007 to the detaining authority and the same was received by it on 10.8.2007, viz., within the statutory period of twelve days. The detaining authority, however, passed an order of rejection, rejecting the representation made on behalf of the detenu, only on 25.8.2007, viz., after the expiry of the statutory period of twelve days, and there is no convincing explanation for the said delay in considering the representation made on behalf of the detenu. We are, therefore, of the considered opinion that the delay in exercising the power conferred on the detaining authority in the manner known to law, vitiates the order of detention.

For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 3.8.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sasi

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. THE SECRETARY TO THE GOVERNMENT OF TAMIL NADU
HOME, PROHIBITION AND EXCISE DEPARTMENT,
FORT ST.GEORGE, CHENNAI-600 009.

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2. THE DISTRICT MAGISTRATE
AND DISTRICT COLLECTOR,
VELLORE DISTRICT, VELLORE.

3. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

4. THE SUPERINTENDENT
CENTRAL PRISON
VELLORE

(In duplicate to communicate the detenu)

5. THE JOINT SECRETARY TO GOVT.
PUBLIC (LAW AND ORDER)
FORT ST. GEORGE, CHENNAI-9.

1 cc to Mr.O.S.Thilak Pasumbadiyar, Advocate, SR.68073

ntk (co)

dv/7.12.

H.C.P.No.1166 of 2007

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